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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ORACLE USA, INC., a Colorado corporation; ORACLE AMERICA, INC., a Delaware corporation; and ORACLE INTERNATIONAL CORPORATION, a California corporation,

Plaintiffs,

v.

RIMINI STREET, INC., a Nevada corporation; and SETH RAVIN, an individual,

Defendants.

Case No. 2:10-cv-0106-LRH-PAL

ORACLE'S MOTION FOR PREJUDGMENT INTEREST; NOTICE OF AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION

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NOTICE OF MOTION AND MOTION

Plaintiffs Oracle USA, Inc., Oracle America, Inc., and Oracle International Corporation ("Oracle") will and hereby do move for an award of prejudgment interest. This motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities incorporated herein, documents incorporated by reference, the entire record in this action, matters appropriate for judicial notice, and any evidence or argument presented on reply or at the hearing.

INTRODUCTION

"[P]rejudgment interest is a well-established remedy in this circuit." *Hopi Tribe v. Navajo Tribe*, 46 F.3d 908, 922 (9th Cir. 1995). "[M]oney has a time value, and prejudgment interest is therefore necessary in the ordinary case to compensate a plaintiff fully for a loss suffered" in the past. *Id.* (citation and quotation marks omitted); *Ellis v. Alessi Tr. Corp.*, 2015 WL 3938436, at *2 (D. Nev. June 26, 2015) (Hicks, J.); *see also W. Virginia v. United States*, 479 U.S. 305, 310 n.2 (1987) ("Prejudgment interest serves to compensate for the loss of use of money due as damages from the time the claim accrues until judgment is entered, thereby achieving full compensation for the injury those damages are intended to redress.").

On Oracle's copyright claim, the jury awarded damages based on a hypothetical license measure, which required the jury to estimate what Rimini and Oracle would have negotiated to compensate Oracle for Rimini's infringement. The jury decided the correct amount was $35.6 million. The hypothetical negotiation occurred when infringement began, which was indisputably by October 29, 2006, but Rimini did not pay Oracle in October 2006. Instead, Rimini enjoyed the benefits of infringement while Oracle received nothing—effectively making Oracle an involuntary creditor of Rimini for nearly a decade. To compensate Oracle for this delay in payment, the presumptive federal prejudgment interest calculation uses 5.07%, (the one-year Treasury rate for the week ending October 27, 2006), compounded yearly until judgment is entered, totaling $19,959,532 in prejudgment interest.

The Court, however, has broad discretion to use an alternative calculation that better reflects the economic realities of this case, and it should. No rational creditor would have lent Rimini—then an infant start-up—substantial funds at the nearly "risk free" Treasury rate. A

more appropriate—but still conservative—measure would be 8.25%, the prime rate as of the week ending October 27, 2006, resulting in $37,060,964 million in prejudgment interest.

Adding prejudgment interest on Oracle's state-law claims—a matter of simple calculation based on statutorily-mandated rates—the total prejudgment interest is as follows:

Prejudgment Interest	***Oracle International***	***Oracle America***
Federal Copyright[1]	$37,060,964	---
California CDAFA[2]	$ 1,568,000	$2,471,560
Nevada CCL[3]	$ 1,764,000	$2,780,505
Total requested (Copyright + CDAFA)[4]	$38,628,964	$2,471,560

STATEMENT OF FACTS

Seth Ravin founded Rimini Street in 2005. Tr. at 240:13-17 (Ravin). Rimini's business model—from the time of its very first customers in 2006—was to offer customers support for Oracle products for 50% off Oracle's prices. Tr. at 240:18-20; 276:24-277:4, 708:10-13 (Ravin). Rimini's business plan was to separate "Oracle from its acquired licensees—denying Oracle recurring revenue . . . ." PTX 3; tr. 546:8-13 (Ravin).

At trial, the jury awarded Oracle two different types of damages. The first was for copyright infringement. Oracle sued for infringement of four product lines: PeopleSoft, J.D. Edwards, Siebel, and Oracle Database. Rimini, by its own admissions, was infringing all four product lines by October 29, 2006. *E.g.*, PTX5 (June 2006 downloading for PeopleSoft); PTX 7 (June 2006 downloading for Siebel); PTX 223 (October 5, 2006 downloading of

[1] Against Rimini Street, Inc. only. Verdict (Dkt. No. 896), Questions 6c, 7-8 & 21-22.

[2] California Computer Data Access and Fraud Act ("CDAFA"), Cal. Penal Code § 502, against both Rimini Street, Inc. and Seth Ravin. Verdict (Dkt. No. 896), Questions 17 & 18, 21-22.

[3] Nevada Computer Crime Law ("NCCL"), Nev. Rev. Stat. § 205.4765 & 205.511(1)(a), against both Rimini Street, Inc. and Seth Ravin. Verdict (Dkt. No. 896), Questions 17 & 18, 21-22.

[4] Oracle pled and continues to pursue the NCCL claim in the alternative to its CDAFA claim, which addresses the same conduct and has the same damages. Accordingly, the "total requested" includes the federal copyright claim plus the CDAFA damages.

J.D. Edwards, Siebel, and PeopleSoft); Tr. 1756:1-1757:8 (Whittenbarger) (same plus Database); PTX 3503 at 9 (admitting Database copies created on October 29, 2006); *see also* Verdict (Dkt. No. 896), Questions 1-3.

The jury was instructed that a fair market value damages measure for copyright infringement should be based on hypothetical negotiations on the dates on which "infringement began." Final Jury Instruction No. 33 (Dkt. No. 880 at 41). Oracle's expert, Elizabeth Dean, used October 29, 2006 as the hypothetical negotiation date for Oracle Database—and Rimini Street never disputed it. Expert Report of Elizabeth Dean (Dkt. No. 661, Ex. 8) ("Dean Report"), at ¶ 352. Rimini's damages expert, Scott Hampton, did not identify a particular date for the negotiations on the other product lines. Instead, his opinion relied on a damages period starting at the beginning of 2006 and used accounting records from 2006 with the jury. Tr. 2758:6-10 (Hampton) (discussing DTX 3019); Expert Report of Scott Hampton (Dkt. No. 664, Ex. 12) ("Hampton Report"), at ¶¶ 10, 68. On the copyright claim, the jury determined that Rimini should have purchased a license from Oracle for $35,600,000.00 as a result of that hypothetical negotiation. Verdict (Dkt. No. 896), Question 6.

During and long after the October 2006 date of the hypothetical negotiations for copyright infringement, Rimini was a risky, money-losing company. Tr. 2655:24-2656:7 (Zorn). As such, its creditors demanded high rates of interest. For example, in 2007, after Rimini had grown considerably, Rimini paid a very high rate—prime *plus 16.25%*—for a $500,000 bank credit line that was secured by all the company's assets and guaranteed by two shareholders. Ringgenberg Decl., Ex. 1 (ASP000732 at 740). And in 2013, Rimini made a software purchase, which Rimini financed with a loan for $1.2 million "at a rate of approximately 9% per annum." Ringgenberg Decl., Ex. 2 (Rimini Street, Inc., Form S-1, Amend. No. 2, at F-19 (filed May 13, 2014)); *see also id.* at p.63.

The second type of damages was for unauthorized access to Oracle's websites. In the November 2008 to January 2009 period, a particularly pernicious episode of such conduct harmed Oracle's servers by causing slowdowns, errors, and deadlocks, and eventually crashing Oracle's server. Tr. 1172:9-15, 1174:5-1175:1, 1179:9-23 (Hicks); 1210:22-1211:10 (Renshaw).

Oracle's expert Christian Hicks identified the customers whose login credentials Rimini used during this episode. Tr. 1180:5-1181:4 (Hicks). The materials obtained with these logins were used as part of the offering to convince specific customers to leave Oracle support for Rimini. PTX 482; Tr. 1139:7-1140:2 (Chiu).

On the computer access claim, Oracle's damages expert Elizabeth Dean identified the profit Oracle would have made from those specific customers had they stayed with Oracle, totaling at least $14.4 million. Tr. 1833:1-19 (Dean). To this she added the $27,000 in labor costs Oracle incurred investigating the impact of Rimini's conduct on Oracle's computer systems. Tr. 1831:3-19 (Dean). The jury agreed with Ms. Dean's calculations and awarded Oracle that precise amount on the downloading claims: $14,427,000.00. Verdict (Dkt. No. 896), Questions 18-19; *see also* Question 22.

Neither side's expert opinions in this matter account for the time value of money. Ms. Dean's report expressly reserved the issue of prejudgment interest. *E.g.*, Dean Report, at ¶¶ 40, 399. Defendants' expert, Mr. Hampton, offered a damages opinion based on point-in-time accounting records to establish Rimini's avoided costs for each year. Hampton Report, at ¶¶ 163-179. Nothing in Mr. Hampton's reports indicate that he ever applied any interest rate, inflation adjustment, or otherwise considered the issue. Never in his deposition or at trial did Rimini or Mr. Hampton suggest otherwise.

ARGUMENT

The federal Copyright Act and the state computer abuse statutes on which the jury awarded damages take different approaches to prejudgment interest. Each is addressed in turn.

I. THE COURT SHOULD AWARD PREJUDGMENT INTEREST ON ORACLE'S COPYRIGHT CLAIM IN THE AMOUNT OF $37.06 MILLION.

As explained below, an award of prejudgment interest would fairly compensate Oracle for the time value of the $35.6 million in license fees the jury determined Oracle was owed in October 2006.

A. Pre-Judgment Interest Should Be Awarded on Oracle's Copyright Claim from October 29, 2006.

An award of prejudgment interest "is available under the Copyright Act of 1976." *Polar Bear Prods., Inc. v. Timex Corp.*, 384 F.3d 700, 716 (9th Cir. 2004). "[I]ts application in a particular case hinges on whether such an award would further the statute's purpose." *Id.* at 718. "[T]he purpose of [17 U.S.C.] § 504(b) is to compensate fully a copyright owner for the misappropriated value of its property and 'to avoid unjust enrichment by defendants, who would otherwise benefit from this component of profit through their unlawful use of another's work.'" *Id.* at 718 (quoting *TVT Records v. Island Def Jam Music Group*, 279 F. Supp. 2d 366, 410 (S.D.N.Y. 2003)). Prejudgment interest also deters infringers and discourages "needless delay." *Polar Bear*, 384 F.3d at 718; *see also Frank Music Corp. v. Metro-Goldwyn-Mayer Inc.*, 886 F.2d 1545, 1551 (9th Cir. 1989) (denying "prejudgment interest systematically undercompensates victims and underdeters putative offenders"). As shown below, prejudgment interest on Oracle's copyright infringement award case plainly serves all these purposes: Rimini denied Oracle compensation by avoiding payment for nearly a decade, Rimini was enriched by taking a long-term multimillion dollar interest-free loan from its competitor, and other would-be infringers would be underdeterred if Rimini benefits from this litigation's length.

The damages measure applied by jury in this case, hypothetical license damages, is established "at the time of infringement." *Oracle Corp. v. SAP AG*, 765 F.3d 1081, 1087 (9th Cir. 2014). The Court instructed the jury to calculate hypothetical license damages based on hypothetical negotiations on "the dates on which infringement began." Final Jury Instruction No. 33 (Dkt. No. 880 at 41); *see also Gaylord v. United States*, 777 F.3d 1363, 1367 (Fed. Cir. 2015) ("To calculate the fair market value, a court deciding a copyright case [. . .] may hypothesize a negotiation between the parties before the infringement occurred"); *Oracle America, Inc. v. Google Inc.*, 847 F. Supp. 2d 1178, 1182 (N.D. Cal. 2012) ("In the context of copyright infringement, the hypothetical lost license fee" is "similar" to patent law and considers a "hypothetical negotiation" at "the time infringement began").

Infringement began on or before October 29, 2006. Oracle's expert, Ms. Dean, used that date as the hypothetical negotiation date for Oracle Database. Dean Report at ¶ 352. Rimini and its expert, Mr. Hampton, never disputed that date. As for PeopleSoft, J.D. Edwards, and Siebel, Mr. Hampton did not identify a particular date for the negotiations, but his opinion relied on a damages period starting at the beginning of 2006 and used accounting records from 2006 with the jury. Tr. 2758:6-10 (Hampton) (discussing DTX 3019); Hampton Report, at ¶¶ 10, 68. The evidence at trial confirmed infringement of all relevant products by October 29, 2006. *E.g.*, PTX 5 (June 2006 downloading for PeopleSoft); PTX 7 (June 2006 downloading for Siebel); PTX 223 (October 5, 2006 downloading of J.D. Edwards, Siebel, and PeopleSoft); Tr. 1756:1-1757:8 (Whittenbarger) (same plus Database); PTX 3503 at 9 (admitting Database copies created on October 29, 2006).

Thus, the hypothetical license negotiations would have occurred on or before October 29, 2006, and Rimini would have owed Oracle $35.6 million by that date. As Oracle did not (and has not) received payment for nearly a decade, prejudgment interest is appropriate to compensate Oracle for the lost time value of money, to prevent unjust enrichment to Rimini, and to deter infringers who, absent prejudgment interest, would be better off refusing to pay license fees until forced by entry of judgment. *TMTV, Corp. v. Mass Prods.*, 645 F.3d 464, 474 (1st Cir. 2011) ("Prejudgment interest dating from the infringements compensated the plaintiff for the time value of monies it should have had—just as if a contract debt had not been paid on time" (copyright case)); *Kleier Advertising, Inc. v. Premier Pontiac, Inc.*, 921 F.2d 1036, 1041-42 (10th Cir. 1990) (citing Ninth Circuit law and finding an abuse of discretion where district court denied prejudgment interest on copyright lump-sum hypothetical license damages); *see also General Motors Corp. v. Devex Corp.*, 461 U.S. 648, 655-56 (1984) (explaining that prejudgment interest on patent damages is paid for "use of the money between the time of infringement and the date of the judgment"); *Frank Music*, 886 F.2d at 1550 & n.5 (explaining that patent and copyright prejudgment interest use the same principles; citing *General Motors*); *cf. Panduit Corp. v. Stahlin Bros. Fibre Works*, 575 F.2d 1152, 1158 (6th Cir. 1978) ("the infringer would have nothing to lose, and everything to gain if he could count on paying only the

normal, routine royalty non-infringers might have paid . . . [and] would be in a 'heads-I-win, tails-you-lose' position").

B. The Court Should Award Federal Prejudgment Interest at the Prime Rate of 8.25%.

In the Ninth Circuit, the starting point for federal prejudgment interest is the post-judgment rate established by 28 U.S.C. § 1961, which is the one-year constant maturity Treasury yield. *See Price v. Stevedoring Servs. of America, Inc.*, 697 F.3d 820, 836-37 (9th Cir. 2012) (*en banc*) (collecting cases defaulting to § 1961 rate for prejudgment interest); *see also Frank Music*, 886 F.2d at 1553. The weekly average 1-year constant maturity Treasury yield for the week ending just prior to infringement (the week ending October 27, 2006)[5] was 5.07%.[6] Applying that rate, compounded annually[7] from October 29, 2006 to entry of judgment at a point after

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[5] Section 1961 is designed for calculating post-judgment interest, so it uses "the weekly average 1-year constant maturity Treasury yield [. . .] for the calendar week preceding judgment." 28 U.S.C. § 1961(a). But the "Treasury bill rate at the time of judgment has no bearing on what could have been earned prior to judgment." *Nelson v. EG&G Energy Measurements Group, Inc.*, 37 F.3d 1384, 1392 (9th Cir. 1992). Instead, the correct rate under § 1961 when used for prejudgment interest is the "rate operative immediately prior to the date" of the conduct that caused Oracle to become Rimini's creditor. *Id.* at 1391; *United States v. Gordon*, 393 F.3d 1044, 1058 n.12 (9th Cir. 2004) ("the applicable prejudgment interest rate is the one in effect immediately *prior* to the date of the wrongful conduct which caused a plaintiff's loss").

[6] Federal Reserve Release H.15, Treasury constant maturities—1 year (nominal), week ending Dec. 30, 2005 (released January 3, 2006), *available at* http://www.federalreserve.gov/releases/h15/20060103/; *see also* Post Judgment Interest Rate, U.S. Admin. Ofc. Courts, *available at* http://www.uscourts.gov/services-forms/fees/post-judgement-interest-rate.

[7] Whatever rate is used, the recent *en banc* decision in *Price* established that compound interest should be the norm, explaining that "courts have increasingly recognized that compound interest generally more fully compensates a plaintiff." 697 F.3d at 834 (internal quotations, citation, and modifications omitted); *see also Gorenstein Enters. v. Quality Care-USA, Inc.*, 874 F.2d 431, 437 (7th Cir. 1989) (Posner, J.) ("We also reject the Gorensteins' argument that the judge should not have awarded *compound* prejudgment interest [because they] denied Quality Care the use of its money, including the opportunity to obtain interest on interest." (trademark case; emphasis in original)). Prejudgment interest is an element of the plaintiff's compensation—and an infringer, like any "ordinary thief," is in no "position to haggle" about the plaintiff's compensation. *Polar Bear*, 384 F.3d at 709. While Oracle conservatively seeks compounding on only an annual basis, more frequent compounding, such as on a monthly or quarterly basis, would also be appropriate. *Blankenship*, 486 F.3d at 628 (10.1% interest compounded monthly appropriate);
(footnote continues on next page)

October 28, 2015, to the jury's verdict of $35.6 million results in $19,959,532 in prejudgment interest. Declaration of Elizabeth Dean in Support of Motion for Prejudgment Interest ("Dean Decl.") ¶ 6 & Ex. A.

However, the Ninth Circuit affords wide discretion in choosing a rate different from the § 1961 rate when "the trial judge finds, on substantial evidence, that the equities of that particular case require a different rate." *Blankenship v. Liberty Life Assurance Co. of Boston*, 486 F.3d 620, 628 (9th Cir. 2007) (upholding a 10.1% prejudgment interest rate); *see also U.S. v. Pend Oreille County Public Utility Dist. No. 1*, 135 F.3d 602, 613 (9th Cir. 1998) (upholding pre-judgment compound interest award at 90% of the prime rate); *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 939 F.2d 1540, 1545 (Fed. Cir. 1991) ("A trial court is afforded wide latitude in the selection of interest rates, and may award interest at or above the prime rate.") (internal citations omitted); *Junker v. HDC Corp.*, 2008 WL 3385819, at *6 (N.D. Cal. July 28, 2008) (Spero, M.J.) ("the court may use the prime rate, the prime rate plus a percentage, the U.S. Treasury rate, state statutory rate, corporate bond rate, or whatever rate the court deems appropriate under the circumstances").

Recently, the Ninth Circuit, sitting *en banc*, explained that the § 1961-based approach to prejudgment interest has utility only so far as it captures "market rates." *Price*, 697 F.3d at 836. The Circuit elaborated that it had merely "acquiesced" in using § 1961-based approaches to "approximate" the correct rate in various contexts. *Id.* at 835, 837-38. Throughout the opinion, the Circuit emphasized that prejudgment interest's primary goal is compensation. *Id.* at 835-38. Neither that goal nor prejudgment interest's inherent equitable nature is served by rigidly adhering to a statutory formula created for a different purpose.[8]

Studiengesellschaft Kohle, m.b.H. v. Dart Industries, Inc., 862 F.2d 1564, 1580 (Fed. Cir. 1988) (quarterly compounding appropriate)).

[8] This Court has recognized that § 1961's reliance on government borrowing rates may not reflect the parties' economic reality. For example, the current Treasury Bill rate is unusually low due to market events arising after 2006. Using it would result in "a windfall profit for the infringer." *Server Tech., Inc. v. American Power Conversion Corp.*, 2015 WL 1505654, at *6 (D. Nev. Mar. 31, 2015) (Hicks, J.); see also *TMTV*, 645 F.3d at 475 ("the present federal rate is depressed by current monetary policy designed to combat recession"; rejecting T-bill-based

(footnote continues on next page)

Here, the hypothetical license measure of damages and the equities considered in a copyright case—compensation to the plaintiff, deterring infringers, and preventing unjust enrichment of the defendant—weigh strongly in favor of a market-based rate higher than the § 1961 rate. In particular, the appropriate analytical approach is to estimate the "interest rate that [the plaintiff] would have demanded had it charged defendants for a loan at the time of the alleged infringement, which captures the possibility that it would get stiffed by defendants." *Open Text S.A. v. Box, Inc.*, 2015 WL 4940798, at *11 (N.D. Cal. Aug. 19, 2015) (collecting patent cases from district courts in the Ninth Circuit); *see also Frank Music*, 886 F.2d at 1550 & n.5 (drawing parallel between patent and copyright prejudgment interest).

The rationale for this approach was reaffirmed by the Ninth Circuit's *en banc* decision in *Price*, 697 F.3d at 843, when it quoted and expressly approved of the Seventh Circuit's decision in *Matter of Oil Spill by Amoco Cadiz*, 954 F.2d 1279 (7th Cir. 1992) on exactly this point, and noted that a defendant's delay in payment makes the plaintiff an "'involuntary creditor.'" *Price*, 697 F.3d at 843 (quoting *Oil Spill*, 954 F.2d at 1331). As *Oil Spill* explained:

> [T]he wrongdoer creates an involuntary creditor. It may take time for the victim to obtain an enforceable judgment, but once there is a judgment the obligation is dated as of the time of the injury. In voluntary credit transactions, the borrower must pay the market rate for money. (The market rate is the minimum appropriate rate for prejudgment interest, because the involuntary creditor might have charged more to make a loan.) Prejudgment interest at the market rate puts *both* parties in the position they would have occupied had compensation been paid promptly. . . . .
>
> . . . .
>
> The defendant may go out of business (or encounter less serious reverses), or hide assets, during the litigation. Any market interest rate reflects three things: the social return on investment (that is, the amount necessary to bid money away from other productive uses), the expected change in the value of money during the term of the loan (i.e., anticipated inflation), and the risk of non-payment. The best

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prejudgment interest rate in a copyright case); *James v. Group Life and Health Benefits Plan*, 2014 WL 4684885, at *3-4 (D. Or. Sept. 19, 2014) ("Citing the historically and artificially low Treasury Bill rate, other courts have awarded higher interest rates for prejudgment interest"; collecting authority and concluding the prime rate at the time of the transactions was appropriate); F.R.E. 201. The distortions become even greater in cases such as this, when there is a "lengthy infringement and litigation period." *Server Tech.*, 2015 WL 1505654, at *6.

> estimate of these three variables is the amount *the defendant* must pay for money, which reflects variables specific to that entity."

954 F.2d at 1331-32; *see also Gorenstein*, 874 F.2d 437 ("a more precise estimate would be the interest rate paid by the defendant for unsecured loans. We do not want to straitjacket the district judges but we do want to caution them against the danger of setting prejudgment interest rates too low by neglecting the risk, often non-trivial, of default").

By contrast, the § 1961 rate presumes a nearly risk-free debt owed by the United States Treasury. That is an inappropriate rate when the forced loan was extended to a risky counterparty. As Judge Easterbrook has explained:

> Winners in litigation are not called "judgment creditors" for nothing. They have made a large, involuntary, unsecured loan to a debtor of uncertain credit-worthiness that is doing its utmost to avoid paying. In the market the rate of interest on such loans greatly exceeds the rate the United States Government has to pay—a rate that economists usually call the "risk-free rate." Plaintiffs did not make a risk-free loan.

In the Matter of Mahurkar Double Lumen Hemodialysis Catheter Patent Litigation, 831 F. Supp 1354, 1394-95 (N.D. Ill. 1993) (Easterbrook, J.), *aff'd sub nom. Quinton Instruments Co. v. Impra, Inc.*, 71 F.3d 1573 (Fed. Cir. 1995).

Accordingly, in the analogous patent infringement context, courts in the Ninth Circuit and elsewhere routinely hold that the "the prime rate was the most accurate estimate of interest the patentee would have charged the infringer for a loan." *Fresenius Med. Care Holdings, Inc. v. Baxter Int'l, Inc.*, 2008 WL 928535, at *3-4 (N.D. Cal. Apr. 4, 2008) (collecting cases); *see also Open Text S.A.*, 2015 WL 4940798, at *11; *IMX, Inc. v. LendingTree, LLC*, 469 F. Supp. 2d 203, 227-28 (D. Del 2007). Like the Seventh Circuit authorities that *Price* endorsed, these courts reason that the prime rate reflects what the businesses involved in litigation would have actually paid for a loan from the time of infringement. *Fresenius Med.*, 2008 WL 928535, at *4; *see also Pend Oreille*, 135 F.3d at 613 (Ninth Circuit upholding pre-judgment compound interest award of 90% the prime rate).

The prime rate just prior to infringement (the week ending October 27, 2006) was 8.25%. Dean Decl. ¶ 7 & Ex. B. Applying the prime rate compounded annually to the jury's verdict of

$35.6 million from October 29, 2006 to entry of judgment on or after October 28, 2015 results in $37,060,964 in prejudgment interest. *Id.*

It bears emphasis that this prime rate is a strongly conservative estimate of what Rimini would have had to pay Oracle in a market transaction. At the time of the hypothetical negotiation, Rimini was losing millions of dollars per year—a risky venture to which no one would lend money at anywhere near prime. DTX 399. Rimini was then a risky new company struggling with resource constraints and attempting to avoid the capital investment associated with building software. Tr. 443:4-445:6, 524:23-525:12, 526:16-527:3, 531:24-534:1 (Ravin). In 2007, after Rimini had grown considerably, Rimini had to pay a much higher rate—prime *plus 16.25%*—for a $500,000 bank credit line that was secured by all the company's assets and guaranteed by two shareholders. Ringgenberg Decl. Ex. 1 (ASP000732 at 740). In 2013 Rimini made a software purchase, which Rimini financed with a loan for $1.2 million "at a rate of approximately 9% per annum." Ringgenberg Decl. Ex. 2 (Rimini Street, Inc., Form S-1, Amend. No. 2, at F-19 (filed May 13, 2014)); *see also id.* at p.63. And at the time of its last SEC filing, in May 2014, Rimini was still paying more than the prime rate for a credit line (prime + 0.75 or 4%, whichever was higher) that was *secured* by putting a portion of Rimini's accounts receivable in a "lockbox." *Id.* at pp. 63 & F-18. By that time, Rimini had been in business for more than 8 years and had a business backlog of more than $1 billion. Tr. 445:7-19 (Ravin); *see also* DTX 399. These facts confirm that a rate of 8.25% for an unsecured software license loan of $35.6 million is more than generous to Rimini.[9]

[9] As with the § 1961 rate, a single rate from the time of the injury is appropriate. *Hockerson-Halberstadt, Inc. v. Propet USA, Inc*., 62 Fed. Appx. 322, 334 (Fed. Cir. 2003) (error to use the prime rate in effect on the date of the judgment; court could have selected other rates, including "the prime rate in effect on the date infringement began"). Here, it is appropriate to use the rate on the date when Rimini forced Oracle to make it a multimillion dollar loan because Rimini forced Oracle to make it a long-term loan, and prime is already generous to Rimini in light of what it would have paid at the time. Moreover, the 8.25% rate's rough accuracy is confirmed throughout the period by the software loan on which Rimini was still paying approximately 9% in 2013.

II. ORACLE IS ENTITLED TO PREJUDGMENT INTEREST ON THE DAMAGES FROM RIMINI'S VIOLATIONS OF COMPUTER STATUTES.

Prejudgment interest on the pendent state claims is a substantive issue governed by state law. *U.S. Fid. & Guar. Co. v. Lee Invs. LLC*, 641 F.3d 1126, 1139 (9th Cir. 2011); *Mangold v. Cal. Pub. Utils. Comm'n*, 67 F.3d 1470, 1478 (9th Cir. 1995) ("The *Erie* principles apply equally in the context of pendent jurisdiction."). Here, both California and Nevada law provide Oracle with prejudgment interest for Rimini's violations of each state's computer statute.

A. California Law Establishes a 7% Interest Rate.

Under California law, "a person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in the person upon a particular day, is entitled also to recover interest thereon from that day." Cal. Civ. Code § 3287(a). Section 3287(a) applies in all types of actions and is a matter of law. *Levy-Zentner Co. v. S. Pac. Trans. Co.*, 74 Cal. App. 3d 762, 794-798 (1st Dist. 1977); *see also Mutuelles Unies v. Kroll & Linstrom*, 957 F.2d 707, 714 (9th Cir. 1992) (applying California law).

A dispute about whether there is liability does not defeat the capable-of-certainty requirement. *Leff v. Gunter*, 33 Cal. 508, 519-20 (1983). Nor does a dispute about the amount of damages "where the amount of recovery closely approximate[s]" the plaintiff's claim. *Id.* Moreover, the "presence of a dispute between the parties as to the way in which to calculate damages does not bar recovery under California Civil Code § 3287." *Sierra Pac. Power Co. v. Hartford Steam Boiler Inspection & Ins. Co.*, 2014 WL 6883056, at *5 (D. Nev. Dec. 5, 2014) (Hicks, J.) (quoting *Baker v. Garden Grove Med. Invs., Ltd.*, 306 Fed. App'x 393, 396 (9th Cir. 2009)); *see also Pet Food Express Ltd. v. Royal Canin USA, Inc.*, 2011 WL 6140886, at *4 (N.D. Cal. Dec. 8, 2011).

Similarly, the vesting requirement is satisfied as soon as the defendant was provided information from which it could have computed the amount. "California cases uniformly have interpreted the 'vesting' requirement as being satisfied at the time that the amount of damages become certain or capable of being made certain, not the time liability to pay those amounts is determined." *Evanston Ins. Co. v. OEA, Inc.*, 566 F.3d 915, 921 (9th Cir. 2009). Thus, vesting

occurs as soon as the plaintiff provides the defendant information from which the defendant could compute damages. *Highlands Ins. Co. v. Continental Cas. Co.*, 64 F.3d 514, 521-22 (9th Cir. 1995) (citing *Levy-Zenter*, 74 Cal. App. at 798); *Ferrellgas, Inc. v. Am. Premier Underwriters, Inc.*, 79 F. Supp. 2d 1160, 1164 (C.D. Cal. 1999) ("prejudgment interest ordinarily should be computed from the earliest date that the defendant knew, or from available information reasonably could have computed, the amount owed on the plaintiff's claim").

Defendants never offered a competing damages figure on CDAFA but merely contested liability and causation. Specifically, Defendants contested neither the mathematical calculation of the components of the CDAFA damages nor the factual amounts underlying those components. Again, those damages are composed of $27,000 in investigation and remediation expenses and $14.4 lost profits from a specific set of downloading customers identified by Oracle's expert Mr. Hicks. *See* Tr. 1831:3-19 & 1833:1-19 (Dean); Verdict (Dkt. No. 896), Questions 18-19; *see also* Question 22. Rimini never contested the amount of the $27,000 investigation and remediation costs—only whether they had liability for it. And Rimini never contested the amount of the lost profits flowing from the lost customers on which the CDAFA damages were awarded—again, they only disputed whether there was liability (either on factual grounds of causation or legal grounds concerning the type of damages recoverable). Oracle's damages under the CDAFA were capable of calculation no later than January 17, 2012, the date Oracle served Ms. Dean and Mr. Hicks's expert reports in this matter, which identified all of the information necessary to calculate the lost profits that the jury awarded. K. Ringgenberg Decl. ¶¶ 5-6. If there were any doubt, the fact that the jury awarded exactly what Oracle requested removes it. *Leff*, 33 Cal. at 520 (even disputes as to the amount of damages does not defeat mandatory prejudgment interest "where the amount of recovery closely approximate[s]" the plaintiff's claim"); Tr. 1832:23-1833:19 (Dean) & 3494:12-3495:1 (closing). Therefore, Oracle's prejudgment interest should begin to run no later than January 17, 2012.

Unlike the compound interest preferred under federal law, California law fixes a rate of 7% simple annual interest when, as here, the case does not involve a breach of fiduciary duty

between the parties. *Michaelson v. Hamada*, 29 Cal. App. 4th 1566, 1585-86 (2d Dist. 1994); Cal. Const. art. XV, § 1.

Finally, there can be no doubt what portion of the verdict is allocated to state claims. The jury's nonduplicative damages figures, combined with its total-damages-per-claim figures demonstrate that the Defendants owe $14,427,000.00 on the state claim, as illustrated below:

Damages	***Oracle International***	***Oracle America***	***Sum***
Copyright	$35,600,000.00[10]	---	$35,600,000.00[11]
State computer statutes	$5,600,000.00[12]	$8,827,000.00[13]	$14,427,000.00
Sum	$41,200,000.00[14]	$8,827,000.00[15]	$50,027,000.00

At 7% simple annual interest for four years from January 17, 2012 to an anticipated date of entry of judgment on or after January 16, 2016, total prejudgment interest owed by the two Defendants under the CDAFA is $2,471,560 to Oracle America and $1,568,000 to Oracle International. Dean Decl. ¶ 9 & Ex. C.

B. Nevada Law Establishes a 5.25% Interest Rate.

As for damages under the NCCL, prejudgment interest is a matter of statutory right. *Torres v. Goodyear Tire & Rubber Co.*, 317 P.3d 828, 830 (Nev. 2014) ("NRS 17.130 . . . provides a statutory right for interest on judgments"). Nevada law establishes a prejudgment interest rate of 2% plus "the prime rate at the largest bank in Nevada as ascertained by the Commissioner of Financial Institutions on January 1 or July 1, as the case may be, immediately preceding the date of judgment." Nev. Rev. Stat. § 17.130; *Telasia, Inc. v. EZ Supply, Inc.*, 2015

[10] Verdict (Dkt. No. 896), Question 6c.

[11] *Id.* Question 6c.

[12] *Id.* Question 18; *see also* Question 22.

[13] *Id.* Question 19.

[14] *Id.* Question 22.

[15] *Id.* Question 21.

WL 2095874, at *2 (D. Nev. May 5, 2015). On July 1, 2015, the prime rate as determined by the Nevada Commissioner of Financial Institutions was 3.25% and has remained at that same rate.[16] Accordingly, the prejudgment interest rate under Nevada law is 5.25%.

Nevada assesses simple interest on an annual basis. *Torres v. Goodyear Tire & Rubber Co.*, 317 P.3d 828, 830-31 (Nev. 2014); *Telasia, Inc. v. EZ Supply, Inc.*, 2015 WL 2095874, at *2 (D. Nev. May 5, 2015) (Foley, M.J.); *Tracey v. Am. Family Mut. Ins. Co.*, 2010 WL 5477751, at *11 (D. Nev. Dec. 30, 2010).

Nevada law differs from both California and federal law in that interest is drawn "from the time of service of the summons." *Sobel v. Hertz Corp.*, 291 F.R.D. 525, 544 (D. Nev. 2013) (Hicks, J.) (quoting Nev. Rev. Stat. § 17.130(2)). The summons in this action was served on January 27, 2010. K. Ringgenberg Decl. Ex. 3 (1/27/2010 email confirming acceptance of service via email).

At 5.25% simple annual interest from January 27, 2010 to an anticipated date of entry of judgment on or after January 26, 2016, total prejudgment interest owed by the two Defendants under the NCCL is $4,544,505, with $2,780,505 to Oracle America and $1,764,000 to Oracle International. Dean Decl. ¶ 11 & Ex. D.

* * *

[16] Comm'r of Fin. Institutions, Prime Interest Rate, *available at* http://www.fid.state.nv.us/prime/primeinterestrate.pdf.

CONCLUSION

For the foregoing reasons, Oracle respectfully requests an award of prejudgment interest on its claims, as follows:

Prejudgment Interest	*Oracle International*	*Oracle America*
Federal Copyright	$37,060,964	---
California CDAFA	$ 1,568,000	$2,471,560
Nevada CCL	$ 1,764,000	$2,780,505
Total requested (Copyright + CDAFA)	$38,628,964	$2,471,560

DATED: November 13, 2015

Respectfully submitted

BOIES, SCHILLER & FLEXNER LLP

By: */s/ Kieran P. Ringgenberg*
Kieran P. Ringgenberg

Attorneys for Plaintiffs Oracle USA, Inc., Oracle America, Inc. and Oracle International Corporation

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of November, 2015, I electronically transmitted the foregoing ORACLE'S MOTION FOR PREJUDGMENT INTEREST to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all counsel in this matter; all counsel being registered to receive Electronic Filing.

DATED: November 13, 2015

Respectfully submitted

BOIES, SCHILLER & FLEXNER LLP

By: */s/ Kieran P. Ringgenberg*
Kieran P. Ringgenberg

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